

February 2, 2005

Brenda Erdoes, Counsel
Legislative Counsel Bureau
401 S. Carson Street Carson City, NV 89701-4747

Subject: Comprehensive Review of Parole Standards (NRS 213.10885)

On or before January 1 of each even-numbered year, the Board of Parole Commissioners (Board) is required to review comprehensively the standards adopted pursuant to NRS 213.10885.

NRS 213.10885 requires that standards be adopted to assist the Board in determining whether to grant or revoke parole and be based on objective criteria for determining the person's probability of success on parole.

In establishing the standards, the Board is required to consider factors which are relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued. These factors include but are not limited to the following:

- (a) The severity of the crime committed;
- (b) The criminal history of the person;
- (c) Any disciplinary action taken against the person while incarcerated;
- (d) Any previous parole violations or failures;
- (e) Any potential threat to society or himself; and
- (f) The length of his incarceration.

The standards must also provide for a greater punishment for a convicted person who has a history of repetitive criminal conduct or who commits a serious crime than for a convicted person who does not have a history of repetitive crimes and did not commit a serious crime.

In early 2003, the Board requested technical assistance from the National Institute of Corrections (NIC) regarding the validation of the Nevada parole standards (hereinafter referred to as parole guidelines). The NIC provided funds to The Institute on Crime, Justice and Corrections at the George Washington University (The Institute) to perform a study on Nevada's parole guidelines and either validate the current guideline used to consider inmates for release on parole, or assist the Board in developing a validated risk assessment.

The board met with Dr. James Austin of The Institute on 5/16/2003, 7/23/2003, 10/24/2003, 4/8/2004 and 11/22/2004 regarding the validation study and comprehensive review of parole standards.

The study began in early 2003 with an analysis of offenders released on parole and discharged from prison during the year 1999 and who returned to a Nevada prison within a 3-year period (note - the existing guideline was implemented in 1998 with a minor revision in 2001).

Some key findings during the study included:

Of the 4,572 inmates (paroled and discharged offenders) released:

- (a) 13.3% returned with a new felony conviction (9.2% of inmates released on parole returned with a new felony conviction while 15.9% of inmates who discharged their sentences returned with a new felony conviction).
- (b) 19.2% of burglars returned with new felony convictions, 16.7% of other property offenders returned with new felony convictions, 10.4% of drug offenders returned with new felony convictions and 9.3% of violent offenders returned with new felony convictions.
- (c) 22.6% of those under the age of 21 at the time of release returned with a new felony conviction. In most cases, the percentage of return with new a new felony conviction decreased as the age category of the offender increased.
- (d) Offenders with multiple felony convictions returned at a higher rate that those with no prior convictions.
- (e) Offenders with a history of institutional violence returned at a higher rate than offenders without a history of institutional violence.
- (f) Male offenders returned at almost twice the rate of female offenders.

During the review, the Board explored several different options based on the data presented by Dr. Austin. These options included but were not limited to:

- (a) Discontinuing the use of the current guideline completely and using only a statistical risk instrument;
- (b) Creating a new guideline that incorporates statistical risk factors with certain components of the current guideline;
- (c) Continue to use the current guideline but incorporate the risk assessment result as an additional factor; and
- (d) Not use a risk assessment and continue only to use the current guideline.

During the period between November 2003 through October 2004, the Board prepared thousands of sample risk assessment documents on active cases to determine how those factors related to the current guideline. During this period, different sample documents were produced and analyzed by The Institute.

On November 22, 2004, Dr. Austin met with the Board and indicated that based on his

analysis, the Board had higher rates of parole denial on offenders who had high risk indicators but felt that more inmates could be safely released on parole, particularly low risk/low offense severity inmates. Dr. Austin recommended that the version of the risk assessment used to prepare sample documents in October 2004 be incorporated as an additional factor on the guideline currently being used by the Board.

Information Regarding Parole Standards

Offenders are considered for release on parole when they have served the minimum time required to attain parole eligibility as provided by Nevada law. If the offender is serving concurrent sentences for multiple offenses, the most severe offense determines the crime severity level.

Pursuant to NRS 213.10885, the Board has adopted standards for release on or revocation of parole. The regulations are set forth in Chapter 213 of the Nevada Administrative Code (NAC) at sections 213.510 through 213.560. The Guideline Recommended Months (GRM) to serve calculated under the Board's parole standards is a suggested range of months to be served and is based on a combination of offense and offender characteristics.

Pursuant to NRS 213.10705, the release or continuation on parole is an act of grace of the State. In addition, pursuant to NRS 213.10705 and NAC 213.560, the Parole Board is not required to grant or deny parole based on the guideline-recommended time to serve, and the establishment of parole standards does not create any right or interest in liberty or property, does not give rise to any reasonable expectation of parole, and does not establish any basis for a cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees.

These parole standards are designed to aid the Board in making consistent decisions. The Board will also consider any recommendations from the Court, law enforcement agencies, prosecutors, prison personnel, and victims as provided in NRS 213.130. Further, the Board will take into account the considerations set forth in NRS 213.1099. In exercising its unlimited discretion to deviate from the time periods recommended under its guidelines, the Board will consider the factors set forth in NAC 213.560, and any other mitigating or aggravating factors which the Board deems relevant.

The Board's current standards were adopted effective August 11, 1998. All offenders being considered for parole release, except those being considered pursuant to the provisions of NRS 213.1215, will be evaluated under the Board's current guidelines, regardless of offense date, date of conviction, or any standards previously utilized in considering the offender for parole release. These standards serve as guidelines only, the Board is not required to adhere to the guidelines, and they are not laws for purposes of ex post facto analysis. Offenders do not have a right to be considered for parole under any previously existing set of parole standards.

The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute. The Board has expanded levels A and B to A1, A2, A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum and maximum sentencing ranges provided for by statute for level A and B

felonies.

The Board will review an offender's disciplinary and programming scores at the time of each hearing. Any change from a previous score will be noted and may result in a change to the offender's net parole success likelihood score and guideline-recommended time to serve.

Inclusion of the risk assessment as a component of the parole guidelines:

In adopting the risk assessment instrument as a factor in the current guideline, the Board has not changed its guideline. The risk assessment is an additional component for the Board to consider when making parole decisions. The risk assessment does not indicate the risk of failure or probability of success on parole, nor does it take into consideration other factors the board must consider or apply (pursuant to NRS 213.10885) when evaluating inmates for release on a parole. The risk assessment provides the statistical risk of the person to commit a new felony within 36 months of release from incarceration. The risk is divided into four categories; low, moderate, high and highest.

The risk assessment is not compiled by the Board, but is based on data existing in the Nevada Criminal Information System which is maintained by the Department of Corrections (NDOC). This information is compiled and submitted to the Board in a report provided by the NDOC prior to each parole hearing.

The inclusion of the risk assessment component on the inmate progress report is expected to be fully implemented by the NDOC in February 2005.

Results and conclusions from the Board's review pursuant to subsection 5 of NRS 213.10885:

The Board concluded based upon statistical information and recommendations by Dr. Austin that the standards are effective in predicting the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued. The inclusion of the risk assessment as a component of the guideline will assist the Board in its continuing efforts to make sound parole decisions by balancing the needs of public safety and prisoner re-entry.

Included with this report are tables and data provided by Dr. Austin, a sample copy of the components of the risk assessment and a sample copy of the parole guidelines.

Please feel free to contact me if you have any questions regarding this report.

Sincerely,

Dorla M. Salling

Chairman